

DATED May 2010

(1) 

and

(4) BRITISH SKY BROADCASTING LIMITED

AGREEMENT FOR THE SUPPLY OF DATA

Draft: (3)

Date: May 2010

Our Ref: AJC/Data Supply/AGBO/Sky



THIS AGREEMENT is dated the day of May 2010

BETWEEN:

- (1) **Andres Gunnar Ballinas Olsson**, music composers and lyricist of; San Magin, 81 1-D, 07013 Palma de Mallorca, Baleares, Spain, born 28th of June 1976 ("**The Copyright Owners**"); and
- (2) **BRITISH SKY BROADCASTING LIMITED**, a company incorporated in the United Kingdom, whose trading address is at Grant Way, Isleworth, Middlesex, TW7 5QD ("**Sky**")

BACKGROUND

- (A) The Copyright Owners seek to bring cease and desist claims for compensation for damages and any other claims in the United Kingdom of Great Britain and Northern Ireland in connection with the infringement of their copyright protected joint work(s) by individuals who make available to others ("**Infringers**") on so-called peer-to-peer networks ("**P2P**"). The Copyright Owners engaged forensic IT experts, Evidenzia GmbH & Co KG ("**Evidenzia**") to monitor and identify the Internet Protocol ("**IP**") addresses engaged in acts of copyright infringement in their copyright protected joint work(s);
- (B) Sky is a telecommunications company that provides, among other services, internet connectivity to subscribers including Infringers. Sky retains details of the account holder of the IP addresses; and
- (C) The Copyright Owners wishes to engage Sky to provide disclosure to The Copyright Owners of the names and addresses of the account holders of the IP addresses identified as infringing copyright, and Sky is willing to provide such information, SUBJECT ALWAYS to the prior provision of a Court Order compelling disclosure thereof, on the terms and conditions appearing below.
- (D) Sky is willing to provide such disclosure to The Copyright Owners subject to the provision of a Court Order compelling disclosure.



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IT IS AGREED as follows:

1 INTERPRETATION

1.1 In this agreement, unless otherwise stated:

- 1.1.1 a reference to a statute or statutory provision includes that statute or provision as amended, extended, re-enacted or consolidated from time to time and all statutory instruments or orders made pursuant to it;
- 1.1.2 words denoting the singular include the plural and vice versa, words denoting one gender include the other, and words denoting persons include firms, corporations or other legal entities and vice versa;
- 1.1.3 a clause or a sub-clause is a reference to the specified clause or sub-clause of this agreement;
- 1.1.4 **'writing'** or any cognate expression includes a communication effected by facsimile transmission or similar means (but not e-mail);
- 1.1.5 **'this Agreement'** means this agreement as amended or supplemented at the relevant time; and
- 1.1.6 **'Business Day'** means a day other than Saturday or Sunday or a day which is a public holiday in England and Wales; and
- 1.1.7 **'Business Hours'** means Monday to Friday, 9am to 5pm UK time on any Business Day.
- 1.1.8 **'IP Session'** means a single batch of IP data from one or more rights owner(s).
- 1.1.9 **'ISP'** means Internet Service Provider, an organisation that provides subscribers with an internet connection.

1.2 The headings in this agreement are for convenience only and do not affect its interpretation.

2 PROVISION OF DATA

During the Term (as hereinafter defined), Sky shall supply the following services to The Copyright Owners:



Transmission of Data

- 2.1 Evidenzia shall obtain the necessary data for effective prosecution of civil claims in the United Kingdom on behalf of The Copyright Owners.
- 2.2 Evidenzia shall forward the following data for each instance of identified infringement on behalf of The Copyright Owners:
 - 2.2.1 product name;
 - 2.2.2 file name;
 - 2.2.3 file size;
 - 2.2.4 client;
 - 2.2.5 IP address;
 - 2.2.6 date of recording with the exact time (not rounded off, up to at least one-second).
- 2.3 The Copyright Owners shall forward the Infringer Data to Sky by way of a Microsoft Excel spreadsheet. If Sky so wishes, The Copyright Owners shall format the spreadsheet to allow it to be compatible with its automation software.
- 2.4 In respect of all data information requested from Sky by The Copyright Owners, The Copyright Owners shall apply to court for an Order compelling Sky to disclose the names and addresses of the account holders of the IP addresses identified as having been utilised in connection with an alleged infringement of copyright.
- 2.5 An application for such Court Order shall be made and an Order granted in terms acceptable to Sky in respect of each batch or collection of data for which information has been requested in advance of the provision of any of that respective information.

Infringer Data Processing (Attorney Module)

- 2.6 The Copyright Owners shall ensure that the software used to process the data provided by Sky ("**Attorney Module**") is compliant with Sky's prescribed data handling procedures (see schedule 1). Compliance with Sky's prescribed data handling procedures will be met at The Copyright Owners's own expense.



2.7 The Copyright Owners shall provide Sky with comprehensive information in relation to the compliance procedures adopted, including but not limited to those adopted by any person firm or company (including its retained lawyers) retained by The Copyright Owners to assist in the handling of claims generated by data supplied to it by Sky. The Copyright Owners shall, in particular, be obliged to ensure that the relevant procedures continue to operate to their full extent.

Other services

2.8 The Copyright Owners shall:

2.8.1 handle suggestions for improvement or requests for compliance functions promptly in accordance with Sky's reasonable requirements on a case-by-case basis and within a reasonable period of time to be agreed between the parties;

2.8.2 adhere to the format of Templates agreed with ISPs.

3 REMUNERATION

3.1 In return for the provision of services by Sky in accordance with this Agreement, The Copyright Owners shall pay Sky the sums as specified below.

- Less than 1,000 IP sessions per month = £65.00 per IP address requested
- 1,000 – 3,000 IP sessions per month = £10.90 per IP address requested
- 3,000 – 5,000 IP sessions per month = £3.60 per IP address requested
- 5,000 – 10,000 IP sessions per month = £2.20 per IP address requested
- More than 10,000 IP sessions per month = £1.10 per IP address requested

For the purposes of calculating the number of IP sessions per month, The Copyright Owners's appointed legal representatives reserve the right to include IP sessions belonging to other rights owners and collection societies, provided they have an agreement with Sky to disclose data on the same remuneration terms.

3.2 Sky has the right to render invoices every 15 days for the IP addresses processed and delivered to The Copyright Owners.



3.2.1 Payments of any sum due to Sky pursuant to The Copyright Owners being invoiced shall be due fifteen (15) days after its rendering.

3.2.2 The Copyright Owners will comply with Sky's terms of business, as detailed in this agreement for future invoices.

4 DURATION AND TERMINATION

4.1 This Agreement shall take effect from the date first appearing and shall continue for a minimum period of one year from the date herein and shall continue thereafter unless and until terminated by either party serving notice on the other of not less than two (2) months' notice in writing or sooner determination where applicable as provided for in this Agreement ("**the Term**"). Either party may terminate this Agreement by giving a written notice to the other party if:

4.1.1 the other party commits a breach of this agreement and, if the breach is capable of remedy, fails to remedy it within thirty (30) days after being given a written notice containing full particulars of the breach and requiring it to be remedied; or

4.1.2 an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the other party; or

4.1.3 the other party becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986); or

4.1.4 the other party goes into liquidation (except for the purpose of amalgamation or reconstruction and so that the resulting company effectively agrees to be bound by or assume the obligations imposed on the other party under this agreement); or

4.1.5 a moratorium comes into force (within the meaning of the Insolvency Act 1986) in respect of the other party;

4.1.6 the other party ceases, or threatens to cease, to carry on business.

4.2 A breach shall be considered capable of remedy if the other party can comply with the provision in question in all respects other than as to the time of performance (provided that the time of performance is not of the essence).

4.3 The rights given to terminate this agreement for any breach shall not affect any other right



or remedy of either party in respect of the breach concerned or any other breach.

5 DATA PROTECTION

5.1 Each party confirms that it holds at the date of commencement of this Agreement and during the Term will continue to hold and maintain all registrations and notifications required by the data protection law in force in the country in which it is established ("**the Legislation**") which are appropriate to the performance of its obligations under this Agreement.

5.2 Each party confirms that in the performance of this Agreement it will comply with the Legislation and with any guidance issued from time to time by any relevant regulatory body in the country in which it is established ("**Regulatory Body**").

5.3 The Copyright Owners warrants respectively on behalf of its representatives and Sky that it has (and that at all times during the period of this Agreement will):

5.3.1 take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, the personal data as well as adequate security programmes and procedures to ensure that only authorised personnel have access to the personal data processing equipment to be used to process the personal data, and that any persons it authorised to have access to the personal data will respect and maintain all due confidentiality;

5.3.2 put in place such security programmes and procedures which specifically address the nature of sensitive personal data, where necessary;

5.3.3 only process the personal data in accordance with the reasonable permissions of Sky and in accordance with the Legislation;

5.3.4 not use the personal data for any purpose not compatible with that made known to it or as may otherwise be authorised by the Regulatory Body or the Legislation or in contravention with any instructions of Sky; and

5.3.5 only use the personal data solely for its own use and not disclose or transfer the personal data without the prior written consent of Sky.

5.4 The Copyright Owners data processor, Evidenzia, undertakes to:



- 5.4.1 submit its data processing facilities, data files and documentation needed for processing to audit and/or certification by Regulatory Body if so requested; and
 - 5.4.2 admit upon its premises upon reasonable notice of the other an appropriate qualified representative of Sky (including legal representatives of the other party and/or the Regulatory Body for the purposes of satisfying the other party) and/or the Regulatory Body of its compliance with the Legislation; and
 - 5.4.3 comply with any changes in the Legislation and/or any change in instructions from the other relating to the personal data.
- 5.5 Each party shall indemnify the other against all legitimate claims and proceedings and all liability, loss, reasonable costs and expenses incurred in connection therewith and brought by any person in respect of any loss, damage or distress caused to that person as a result of the other's unauthorised or unlawful processing, destruction and/or damage to any personal data and/or any breach by the other, its employees or agents in respect of its obligations.

6 CONFIDENTIALITY

- 6.1 The Copyright Owners and Sky will keep confidential the existence and contents of this Agreement and all other secret and confidential information obtained under or in connection with this Agreement and, subject to clause 6.3 of this Agreement and except where required by law or regulation or in order to enforce the terms of this Agreement, will not divulge the same to any other third party (excluding the Rights Holders) without the prior written consent of the other party.
- 6.2 The term "secret and confidential information" includes any information concerning the business and affairs (including trade secrets) of The Copyright Owners or the Rights Holders, the release of which would reasonably be believed to be injurious to either The Copyright Owners or the Rights Holders, their employees, or agents or subcontractors or advantageous to their competitors.
- 6.3 The Copyright Owners and Sky will divulge confidential information only to employees or subcontractors who have a genuine business need to know such information and will ensure that such persons are aware of and comply with this obligation of confidentiality. Both The Copyright Owners and Sky will indemnify the other party against any loss or damage it may sustain or incur as a result of any breach of confidentiality by such receiving

party.

- 6.4 Both The Copyright Owners and Sky will promptly notify the other party if it becomes aware of any breach of confidence by any person to whom that party passes material or information and will give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person.

7 MISCELLANEOUS PROVISIONS

- 7.1 To the extent that any provision of this Agreement is or becomes invalid, in whole or in part, the remaining parts of this Agreement shall nevertheless remain in force and the enforceability of the remainder of this Agreement shall remain unaffected.
- 7.2 Any alterations and additions to this Agreement shall only be effective if they are in writing and signed by both parties.
- 7.3 Notwithstanding any other provisions in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement.
- 7.4 Nothing in this Agreement shall make either party the partner or agent of the other party.
- 7.5 This Agreement, together with the documents referred to in it, constitutes the entire Agreement and understanding of the parties and supersedes any previous Agreement between them relating to the subject matter of this Agreement.
- 7.6 Each party acknowledges that in entering into this Agreement it does not rely on any representation or warranty except as expressly set out in this Agreement, but nothing in this Agreement is intended to limit or exclude any liability for fraudulent misrepresentation.
- 7.7 If a party:
- 7.7.1 fails to exercise, or delays in exercising, a right under this Agreement, it shall not be deemed to have waived that right; or
 - 7.7.2 waives its right in relation to a breach of this Agreement, it shall not be deemed to have waived its rights in relation to any subsequent breach of the same or any other provision of this Agreement.
- 7.8 The rights of each party under this Agreement are cumulative and additional to any other

right or remedy.

- 7.9 Each party shall, both during and after the Term, do all things reasonably necessary to give effect to the provisions of this Agreement.
- 7.10 English law shall apply to this Agreement and the parties shall submit to the non-exclusive jurisdiction of the English Courts.
- 7.11 This Agreement may be executed in more than one counterpart and shall come into force once each party has executed such a counterpart in identical form and exchanged it with the other party.
- 7.12 Except as otherwise provided in this Agreement, each party shall pay its own costs in connection with this Agreement.

8 LIABILITY

Neither party shall be deemed to be in breach of this Agreement, or have any liability to the other, to the extent that it is prevented from carrying out its obligations under this Agreement by reason of any circumstances beyond its reasonable control. In the event that such circumstances continue beyond the period of sixty (60) days, the non-affected party shall be entitled to terminate this Agreement forthwith upon written notice to the other party.

9 NOTICES

- 9.1 Any notice relating to this Agreement will be validly given only if it is in writing and delivered personally or by courier, or sent by first class post (or air mail if overseas), recorded delivery or fax, to the intended recipient at the address or fax number set out in this Agreement or such other address or fax number as the party in question may specify by notice. A notice shall not be valid if sent by email.
- 9.2 In the absence of evidence of earlier receipt, a notice is deemed given:
 - 9.2.1 if delivered personally or by courier, when left at the relevant address;
 - 9.2.2 if sent by post other than airmail, two (2) Business Days after posting it;
 - 9.2.3 if sent by air mail, five (5) Business Days after posting it; and
 - 9.2.4 if sent by fax, on completion of transmission, provided that the sender can produce

successful transmission report from the transmitting fax machine.

9.3 The address as set out at the beginning of this Agreement of each party for the purposes of this Agreement is:

9.3.1 for BSKYB TELECOMMUNICATIONS LIMITED, a company incorporated in the United Kingdom, whose trading address is at Grant Way, Isleworth, Middlesex, TW7 5QD.

9.3.2 Andres Gunnar Balinas Olsson, music composers and lyricist of; San Magin, 81 I-D, 07013 Palma de Mallorca, Baleares, Spain, born 28th of June 1976.

Signed by _____
on behalf of **The Copyright Owners**

Signature

Date

Writer, composer and lyricist

Position

Signed by _____
on behalf of **BSKYB TELECOMMUNICATIONS LIMITED**

Signature

Date

Position